



## Senate

General Assembly

**File No. 53**

February Session, 2008

Substitute Senate Bill No. 201

*Senate, March 19, 2008*

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2008*) There shall be within the  
2       executive department an Office of Administrative Hearings for the  
3       purpose of separating the adjudicatory function from the investigatory  
4       and prosecutorial functions of agencies in the executive department  
5       and to perform the impartial administration and conduct of hearings  
6       of contested cases in accordance with the provisions of sections 1 to 10,  
7       inclusive, and 22 of this act and chapter 54 of the general statutes. The  
8       central office of the Office of Administrative Hearings shall be  
9       established within Hartford County.

10       Sec. 2. (NEW) (*Effective July 1, 2008*) (a) A Chief Administrative Law  
11       Adjudicator shall be appointed by the Governor, to serve a term  
12       expiring on March 1, 2009. Thereafter, the Governor shall, with the  
13       advice and consent of the General Assembly, appoint the Chief

14 Administrative Law Adjudicator to serve for a four-year term or until  
15 a successor has been appointed and qualified. To be eligible for  
16 appointment, the Chief Administrative Law Adjudicator shall have  
17 been admitted to the practice of law in this state for at least ten years  
18 and shall be knowledgeable on the subject of administrative law. The  
19 Chief Administrative Law Adjudicator shall take the oath of office  
20 provided in section 1-25 of the general statutes prior to commencing  
21 his or her duties, shall devote full time to the duties of the office of  
22 Chief Administrative Law Adjudicator and shall not engage in the  
23 private practice of law. The Chief Administrative Law Adjudicator  
24 shall be eligible for reappointment.

25 (b) The Chief Administrative Law Adjudicator may be removed  
26 during his or her term by the Governor for good cause shown.

27 (c) The Chief Administrative Law Adjudicator shall be exempt from  
28 the classified service.

29 (d) The Chief Administrative Law Adjudicator, administrative law  
30 adjudicators, assistants and other employees of the Office of  
31 Administrative Hearings shall be entitled to the fringe benefits  
32 applicable to other state employees, shall be included under the  
33 provisions of chapters 65 and 66 of the general statutes regarding  
34 disability and retirement of state employees, and shall receive full  
35 retirement credit for each year or portion thereof for which retirement  
36 benefits are paid for service as such Chief Administrative Law  
37 Adjudicator, administrative law adjudicator, assistant or other  
38 employee.

39 Sec. 3. (NEW) (*Effective July 1, 2008*) The Chief Administrative Law  
40 Adjudicator shall be the chief executive officer of the Office of  
41 Administrative Hearings and shall:

42 (1) Have all of the powers specifically granted in the general statutes  
43 and any additional powers that are reasonable and necessary to enable  
44 the Chief Administrative Law Adjudicator to carry out the duties of his  
45 or her office, including, but not limited to, the powers and duties

46 specified in section 4-8 of the general statutes;

47 (2) Assign administrative law adjudicators in all cases referred to  
48 the Office of Administrative Hearings, provided, in assigning an  
49 administrative law adjudicator to a case, the Chief Administrative Law  
50 Adjudicator shall, whenever practicable, assign an administrative law  
51 adjudicator who has expertise in the legal issues or general subject  
52 matter of the proceeding;

53 (3) Have all the powers and duties of an administrative law  
54 adjudicator;

55 (4) Prepare an edited version of a proposed final decision and final  
56 decision that shall not disclose protected information in any case  
57 where any provision of the general statutes, federal law, state or  
58 federal regulations, or an order of a court of competent jurisdiction  
59 bars the disclosure of the identity of any person or party or bars the  
60 disclosure of any other information;

61 (5) Collect, compile and prepare statistics and other data with  
62 respect to the operations of the Office of Administrative Hearings and  
63 submit annually to the Governor and the General Assembly a report  
64 on such operations, including, but not limited to, the number of  
65 hearings initiated, the number of proposed final decisions rendered,  
66 the number of partial or total reversals of such decisions by the  
67 agencies, the number of final decisions rendered and the number of  
68 proceedings pending;

69 (6) Study the subject of administrative adjudication in all its aspects  
70 and develop recommendations to promote the goals of impartiality,  
71 fairness, uniformity and cost-effectiveness in the administration and  
72 conduct of hearings of contested cases;

73 (7) Adopt regulations, in accordance with chapter 54 of the general  
74 statutes, to carry out the provisions of sections 1 to 10, inclusive, and  
75 22 of this act and sections 4-176e to 4-181a, inclusive, of the general  
76 statutes, as amended by this act, and the policies of the Office of

77 Administrative Hearings in connection therewith. Such regulations,  
78 with respect to contested cases heard by said office, shall supersede  
79 any inconsistent agency regulations, policies or procedures, except  
80 those provisions mandated by the general statutes or federal law, and  
81 shall include, but not be limited to, standards related to time limits for  
82 agency action in contested cases pursuant to applicable provisions of  
83 the general statutes, and standards for the giving of notices of  
84 hearings, for the scheduling of hearings and for the assignment of  
85 administrative law adjudicators;

86 (8) Develop a program for the continuing education of  
87 administrative law adjudicators in procedural due process and in the  
88 substantive law of the agencies that are subject to the provisions of  
89 section 8 of this act and training for ancillary personnel, and  
90 implement such program; and

91 (9) Index, by name and subject, all written orders and final decisions  
92 and make all indices, proposed final decisions and final decisions  
93 available for public inspection, and copying electronically and to the  
94 extent required by the Freedom of Information Act, as defined in  
95 section 1-200 of the general statutes.

96 Sec. 4. (NEW) (*Effective October 1, 2008*) (a) Notwithstanding any  
97 provision of the general statutes, each full-time employee or  
98 permanent part-time employee of an agency subject to the provisions  
99 of section 8 of this act whose primary duties (1) are to conduct hearings  
100 in contested cases and issue final decisions or proposed final decisions,  
101 including, but not limited to, human rights referees, staff attorneys,  
102 hearing adjudicators and hearing officers, or (2) relate to providing  
103 administrative services required for conducting such hearings and  
104 issuing such decisions, shall be transferred to the Office of  
105 Administrative Hearings, in accordance with the provisions of this  
106 section and sections 4-38d, 4-38e and 4-39 of the general statutes.

107 (b) Persons transferred to the Office of Administrative Hearings  
108 pursuant to this section and persons appointed by the Chief  
109 Administrative Law Adjudicator pursuant to chapter 67 of the general

110 statutes shall be in the classified service, represented by the collective  
111 bargaining representative of an employee organization, as defined in  
112 section 5-270 of the general statutes, and subject to the provisions of  
113 chapter 68 of the general statutes. Persons transferred to the Office of  
114 Administrative Hearings pursuant to this section who are members of  
115 an employee organization at the time of their transfer shall continue to  
116 be represented by such employee organization.

117 (c) The salaries, seniority and benefits of persons transferred to the  
118 Office of Administrative Hearings pursuant to this section shall not be  
119 reduced as a result of the transfer.

120 (d) No promotions governed by any existing and applicable  
121 memorandum of understanding between the Office of Labor Relations  
122 and any collective bargaining representative for state employees shall  
123 be denied, delayed, impaired or eliminated by the implementation of  
124 sections 1 to 10, inclusive, of this act.

125 (e) (1) Persons transferred to the Office of Administrative Hearings  
126 pursuant to this section who are members of a collective bargaining  
127 unit at the time of their transfer shall (A) not lose the job classification  
128 they had at the time of their transfer as a result of the transfer, and (B)  
129 remain the beneficiaries of any existing and applicable memorandum  
130 of understanding between the Office of Labor Relations and any  
131 collective bargaining representative for state employees. The rights  
132 and obligations contained in any memorandum of understanding that  
133 applies to staff attorneys shall apply to administrative law adjudicators  
134 transferred to the Office of Administrative Hearings and appointed by  
135 the Chief Administrative Law Adjudicator.

136 (2) Persons transferred to the Office of Administrative Hearings  
137 pursuant to this section who are not members of a collective  
138 bargaining unit at the time of their transfer, and persons appointed by  
139 the Chief Administrative Law Adjudicator, shall (A) have a job  
140 classification commensurate with persons who are members of a  
141 collective bargaining unit at the time of their transfer, and (B) be  
142 subject to and become the beneficiaries of the terms of any existing and

143 applicable memorandum of understanding between the Office of  
144 Labor Relations and any collective bargaining representative for state  
145 employees, including the rights and obligations contained in any  
146 memorandum of understanding that applies to staff attorneys.

147 (f) Time served in other agencies by persons transferred to the  
148 Office of Administrative Hearings pursuant to this section shall be  
149 recognized as qualifying experience and time in the Office of  
150 Administrative Hearings shall count as successful and satisfactory  
151 performance for career progression under any existing and applicable  
152 memorandum of understanding between the Office of Labor Relations  
153 and any collective bargaining representative for state employees.

154 (g) An administrative law adjudicator, assistant or other employee  
155 of the Office of Administrative Hearings who is removed, suspended,  
156 demoted or subjected to disciplinary action or other adverse  
157 employment action may appeal such action in accordance with the  
158 applicable collective bargaining agreement.

159 Sec. 5. (NEW) (*Effective October 1, 2008*) (a) Each administrative law  
160 adjudicator shall have been admitted to the practice of law in this state  
161 for at least two years, except that such requirement shall not apply to  
162 any administrative law adjudicator transferred pursuant to section 4 of  
163 this act. Each administrative law adjudicator shall be knowledgeable  
164 on the subject of administrative law.

165 (b) An administrative law adjudicator shall have the powers  
166 granted to hearing officers and presiding officers pursuant to sections  
167 1 to 10, inclusive, and 22 of this act and chapter 54 of the general  
168 statutes.

169 Sec. 6. (NEW) (*Effective October 1, 2008*) All hearings in contested  
170 cases conducted by the Office of Administrative Hearings shall be  
171 conducted by an administrative law adjudicator assigned by the Chief  
172 Administrative Law Adjudicator and shall be conducted in accordance  
173 with sections 1 to 10, inclusive, and 22 of this act and sections 4-176e to  
174 4-181a, inclusive, of the general statutes, as amended by this act.

175       Sec. 7. (NEW) (*Effective October 1, 2008*) An administrative law  
176 adjudicator may conduct hearings, mediations and settlement  
177 negotiations held by the Office of Administrative Hearings. If a  
178 contested case is not resolved through mediation or settlement, either  
179 party may proceed to a hearing. An administrative law adjudicator  
180 who attempts to settle or mediate a matter may not thereafter be  
181 assigned to hear the matter. If a contested case is resolved by  
182 stipulation, agreed settlement or consent order, the administrative law  
183 adjudicator shall issue an order dismissing the contested case. The  
184 order shall incorporate by reference such stipulation, agreed settlement  
185 or consent order which shall be attached thereto. The order shall  
186 further provide that no findings of fact or conclusions of law have been  
187 made regarding any alleged violations of the law. The order and  
188 stipulation, agreed settlement or consent order may be enforceable by  
189 any party in the superior court for the judicial district of New Britain.

190       Sec. 8. (NEW) (*Effective October 1, 2008*) (a) Notwithstanding any  
191 provision of the general statutes, and except as otherwise provided in  
192 sections 9 and 10 of this act, on and after the effective date of this  
193 section, the Office of Administrative Hearings shall conduct hearings  
194 and render proposed final decisions or, if authorized or required by  
195 law, final decisions in contested cases:

196       (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of  
197 the general statutes;

198       (2) Brought by or before the Department of Children and Families;

199       (3) Brought by or before the Department of Transportation; and

200       (4) Brought by or before the Commission on Human Rights and  
201 Opportunities.

202       (b) Any agency that is not required to refer contested cases to the  
203 Office of Administrative Hearings pursuant to this section may, with  
204 the consent of the Chief Administrative Law Adjudicator, refer any  
205 contested case brought by or before such agency, to the Office of

206 Administrative Hearings for purposes of mediation, settlement or a  
207 full adjudication of the contested case by an administrative law  
208 adjudicator.

209 (c) The powers, functions and duties of conducting hearings and  
210 issuing decisions in contested cases enumerated in subsections (a) and  
211 (b) of this section shall, on the date specified in subsection (a) or the  
212 date of referral in subsection (b), be transferred to the Office of  
213 Administrative Hearings in accordance with the provisions of sections  
214 4-38d, 4-38e and 4-39 of the general statutes.

215 (d) Any hearing officer under contract with an agency to conduct  
216 hearings and issue decisions in contested cases enumerated in  
217 subsections (a) and (b) of this section shall, on and after the date  
218 specified in subsection (a) or the date of referral in subsection (b),  
219 continue to serve until all such cases assigned to such hearing officer  
220 are completed, unless the Chief Administrative Law Adjudicator  
221 determines that the case shall be reassigned to an administrative law  
222 adjudicator.

223 (e) Nothing in this section shall be construed to apply to the State  
224 Board of Mediation and Arbitration or the State Board of Labor  
225 Relations.

226 (f) The Department of Children and Families shall execute any  
227 requisite contract with the Office of Administrative Hearings that is  
228 necessary to maintain and secure any federal or state funding or  
229 reimbursement.

230 Sec. 9. (NEW) (*Effective July 1, 2008*) No administrative law  
231 adjudicator may be assigned by the Chief Administrative Law  
232 Adjudicator to hear a contested case with respect to:

233 (1) Any hearing that is required by federal law to be conducted by a  
234 specific agency or other hearing authority; or

235 (2) Any matter where the head of the agency, or one or more of the  
236 members of a multimember agency, presides at the hearing in a



237 contested case.

238 Sec. 10. (NEW) (*Effective July 1, 2008*) On and after October 1, 2011,  
239 the Governor, at the request of the head of any agency subject to the  
240 provisions of subsection (a) of section 8 of this act and for good cause  
241 shown, may exempt such agency from the requirements of said  
242 section.

243 Sec. 11. Subsection (e) of section 2c-2b of the 2008 supplement to the  
244 general statutes is amended by adding subdivision (21) as follows  
245 (*Effective July 1, 2008*):

246 (NEW) (21) The Office of Administrative Hearings established  
247 under section 1 of this act.

248 Sec. 12. Section 4-166 of the general statutes is repealed and the  
249 following is substituted in lieu thereof (*Effective October 1, 2008*):

250 As used in this chapter and sections 1 to 10, inclusive, and 22 of this  
251 act, unless the context otherwise requires:

252 (1) "Agency" means each state board, commission, department or  
253 officer authorized by law to make regulations or to determine  
254 contested cases, but does not include either house or any committee of  
255 the General Assembly, the courts, the Council on Probate Judicial  
256 Conduct, the Governor, Lieutenant Governor or Attorney General, or  
257 town or regional boards of education, or automobile dispute  
258 settlement panels established pursuant to section 42-181 of the 2008  
259 supplement to the general statutes;

260 (2) "Contested case" means a proceeding, including but not  
261 restricted to rate-making, price fixing and licensing, in which the legal  
262 rights, duties or privileges of a party are required by state statute or  
263 regulation to be determined by an agency or by the Office of  
264 Administrative Hearings after an opportunity for hearing or in which a  
265 hearing is in fact held, but does not include proceedings on a petition  
266 for a declaratory ruling under section 4-176, as amended by this act,  
267 hearings referred to in section 4-168 of the 2008 supplement of the

268 general statutes or hearings conducted by the Department of  
269 Correction or the Board of Pardons and Paroles;

270 (3) "Final decision" means (A) the [agency] determination in a  
271 contested case made pursuant to section 4-179, as amended by this act,  
272 section 22 of this act and section 4-180, as amended by this act, (B) a  
273 declaratory ruling issued by an agency pursuant to section 4-176, as  
274 amended by this act, or (C) [an agency] a decision made after  
275 reconsideration of a final decision. The term does not include a  
276 preliminary or intermediate ruling or order, [of an agency,] or a ruling  
277 [of an agency] granting or denying a petition for reconsideration;

278 (4) "Hearing officer" means an individual appointed by an agency to  
279 conduct a hearing in an agency proceeding that is not conducted by an  
280 administrative law adjudicator pursuant to section 8 of this act. Such  
281 individual may be a staff employee of the agency;

282 (5) "Intervenor" means a person, other than a party, granted status  
283 as an intervenor by an agency in accordance with the provisions of  
284 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as  
285 amended by this act;

286 (6) "License" includes the whole or part of any agency permit,  
287 certificate, approval, registration, charter or similar form of permission  
288 required by law, but does not include a license required solely for  
289 revenue purposes;

290 (7) "Licensing" includes the agency process respecting the grant,  
291 denial, renewal, revocation, suspension, annulment, withdrawal or  
292 amendment of a license;

293 (8) "Party" means each person (A) whose legal rights, duties or  
294 privileges are required by statute to be determined by an agency  
295 proceeding and who is named or admitted as a party, (B) who is  
296 required by law to be a party in an agency proceeding, or (C) who is  
297 granted status as a party under subsection (a) of section 4-177a, as  
298 amended by this act;

299 (9) "Person" means any individual, partnership, corporation, limited  
300 liability company, association, governmental subdivision, agency or  
301 public or private organization of any character, but does not include  
302 the agency conducting the proceeding;

303 (10) "Presiding officer" means the head of the agency presiding at a  
304 hearing, the member of [an] a multimember agency or the hearing  
305 officer designated by the head of the agency to preside at [the] a  
306 hearing, or an administrative law adjudicator presiding at a hearing;

307 (11) "Proposed final decision" means a final decision proposed by an  
308 agency or a presiding officer under section 4-179, as amended by this  
309 act, or section 22 of this act;

310 (12) "Proposed regulation" means a proposal by an agency under  
311 the provisions of section 4-168 of the 2008 supplement to the general  
312 statutes for a new regulation or for a change in, addition to or repeal of  
313 an existing regulation;

314 (13) "Regulation" means each agency statement of general  
315 applicability, without regard to its designation, that implements,  
316 interprets, or prescribes law or policy, or describes the organization,  
317 procedure, or practice requirements of any agency. The term includes  
318 the amendment or repeal of a prior regulation, but does not include  
319 (A) statements concerning only the internal management of any  
320 agency and not affecting private rights or procedures available to the  
321 public, (B) declaratory rulings issued pursuant to section 4-176, as  
322 amended by this act, or (C) intra-agency or interagency memoranda;

323 (14) "Regulation-making" means the process for formulation and  
324 adoption of a regulation;

325 (15) "Administrative law adjudicator" means an administrative law  
326 judge transferred in accordance with sections 2 to 5, inclusive, of this  
327 act or a person appointed pursuant to section 4 of this act to conduct  
328 administrative hearings;

329 (16) "Head of the agency" means the individual or group of

330 individuals constituting the highest authority within an agency.

331 Sec. 13. Subsection (g) of section 4-176 of the general statutes is  
332 repealed and the following is substituted in lieu thereof (*Effective*  
333 *October 1, 2008*):

334 (g) If the agency conducts a hearing in a proceeding for a  
335 declaratory ruling, the provisions of [subsection (b) of section 4-177c,  
336 section 4-178, as amended by this act, and section 4-179, as amended  
337 by this act, shall apply to the hearing.

338 Sec. 14. Section 4-176e of the general statutes is repealed and the  
339 following is substituted in lieu thereof (*Effective October 1, 2008*):

340 Except as otherwise required by the general statutes, a [hearing in  
341 an agency proceeding may be held before (1)] contested case shall be  
342 heard by (1) an administrative law adjudicator, (2) the head of the  
343 agency, (3) one or more of the members of a multimember agency, or  
344 (4) one or more hearing officers, provided no individual who has  
345 personally carried out the function of an investigator in a contested  
346 case may serve as a hearing officer in that case. [, or (2) one or more of  
347 the members of the agency.]

348 Sec. 15. Section 4-177 of the general statutes is repealed and the  
349 following is substituted in lieu thereof (*Effective October 1, 2008*):

350 (a) In a contested case, all parties shall be afforded an opportunity  
351 for hearing after reasonable notice from the agency.

352 (b) The notice shall be in writing and shall include: (1) A statement  
353 of the time, place [,] and nature of the hearing or, if the contested case  
354 has been referred to the Office of Administrative Hearings, a statement  
355 that the matter has been referred to the Office of Administrative  
356 Hearings and that the time and place of the hearing will be set by an  
357 administrative law adjudicator; (2) a statement of the legal authority  
358 and jurisdiction under which the hearing is to be held; (3) a reference  
359 to the particular sections of the statutes and regulations involved; and  
360 (4) a short and plain statement of the matters asserted. If the agency or

361 party is unable to state the matters in detail at the time the notice is  
362 served, the initial notice may be limited to a statement of the issues  
363 involved. Thereafter, upon application, a more definite and detailed  
364 statement shall be furnished.

365 (c) After an agency refers a contested case to the Office of  
366 Administrative Hearings, the agency shall certify the official record in  
367 such contested case to the Office of Administrative Hearings. The  
368 Office of Administrative Hearings shall issue a notice in writing to all  
369 parties that shall include a statement of the time, place and nature of  
370 the hearing. Thereafter, a party shall file all documents that are to  
371 become part of such record with the Office of Administrative  
372 Hearings. The filing of such documents with the agency rather than  
373 with the Office of Administrative Hearings shall not be a jurisdictional  
374 defect and shall not be grounds for termination of the proceeding,  
375 provided the administrative law adjudicator may assess appropriate  
376 costs and sanctions against a party who misfiles such documents on a  
377 showing of prejudice resulting from a wilful misfiling. The Office of  
378 Administrative Hearings shall maintain the official record of a  
379 contested case referred to said office.

380 [(c)] (d) Unless precluded by law, a contested case may be resolved  
381 by stipulation, agreed settlement [,] or consent order or by the default  
382 of a party.

383 [(d)] (e) The record in a contested case shall include: (1) Written  
384 notices related to the case; (2) all petitions, pleadings, motions and  
385 intermediate rulings; (3) evidence received or considered; (4) questions  
386 and offers of proof, objections and rulings thereon; (5) the official  
387 transcript, if any, of proceedings relating to the case, or, if not  
388 transcribed, any recording or stenographic record of the proceedings;  
389 (6) proposed final decisions and exceptions thereto; and (7) the final  
390 decision.

391 [(e)] (f) Any recording or stenographic record of the proceedings  
392 shall be transcribed on request of any party. The requesting party shall  
393 pay the cost of such transcript, unless otherwise provided by law.

394 Nothing in this section shall relieve an agency of its responsibility  
395 under section 4-183, as amended by this act, to transcribe the record for  
396 an appeal.

397 Sec. 16. Section 4-177a of the general statutes is repealed and the  
398 following is substituted in lieu thereof (*Effective October 1, 2008*):

399 (a) The presiding officer shall grant a person status as a party in a  
400 contested case if [that] such officer finds that: (1) Such person has  
401 submitted a written petition to the agency or presiding officer, and  
402 mailed copies to all parties, at least five days before the date of  
403 hearing; and (2) the petition states facts that demonstrate that the  
404 petitioner's legal rights, duties or privileges shall be specifically  
405 affected by [the agency's] a decision in the contested case.

406 (b) The presiding officer may grant any person status as an  
407 intervenor in a contested case if [that] such officer finds that: (1) Such  
408 person has submitted a written petition to the agency or presiding  
409 officer, and mailed copies to all parties, at least five days before the  
410 date of hearing; and (2) the petition states facts that demonstrate that  
411 the petitioner's participation is in the interests of justice and will not  
412 impair the orderly conduct of the proceedings.

413 (c) The five-day requirement in subsections (a) and (b) of this  
414 section may be waived at any time before or after commencement of  
415 the hearing by the presiding officer on a showing of good cause.

416 (d) If a petition is granted pursuant to subsection (b) of this section,  
417 the presiding officer may limit the intervenor's participation to  
418 designated issues in which the intervenor has a particular interest as  
419 demonstrated by the petition and shall define the intervenor's rights to  
420 inspect and copy records, physical evidence, papers and documents, to  
421 introduce evidence [,] and to argue and cross-examine on those issues.  
422 The presiding officer may further restrict the participation of an  
423 intervenor in the proceedings, including the rights to inspect and copy  
424 records, to introduce evidence and to cross-examine, so as to promote  
425 the orderly conduct of the proceedings.

426 Sec. 17. Section 4-177b of the general statutes is repealed and the  
427 following is substituted in lieu thereof (*Effective October 1, 2008*):

428 In a contested case, the presiding officer may administer oaths, take  
429 testimony under oath relative to the case, subpoena witnesses and  
430 require the production of records, physical evidence, papers and  
431 documents to any hearing held in the case. If any person disobeys the  
432 subpoena or, having appeared, refuses to answer any question put to  
433 [him] such person or to produce any records, physical evidence,  
434 papers and documents requested by the presiding officer, the  
435 administrative law adjudicator or, if the hearing is conducted by the  
436 agency, the agency may apply to the superior court for the judicial  
437 district of [Hartford] New Britain or for the judicial district in which  
438 the person resides, or to any judge of that court if it is not in session,  
439 setting forth the disobedience to the subpoena or refusal to answer or  
440 produce, and the court or judge shall cite the person to appear before  
441 the court or judge to show cause why the records, physical evidence,  
442 papers and documents should not be produced or why a question put  
443 to [him] such person should not be answered. Nothing in this section  
444 shall be construed to limit the authority of the agency, the  
445 administrative law adjudicator or any party as otherwise allowed by  
446 law.

447 Sec. 18. Section 4-177c of the general statutes is repealed and the  
448 following is substituted in lieu thereof (*Effective October 1, 2008*):

449 [(a)] In a contested case, each party and the agency, including an  
450 agency conducting the proceeding, shall be afforded the opportunity  
451 (1) to inspect and copy relevant and material records, papers and  
452 documents not in the possession of the party or such agency, except as  
453 otherwise provided by federal law or any other provision of the  
454 general statutes, and (2) at a hearing, to respond, to cross-examine  
455 other parties, intervenors [,] and witnesses, and to present evidence  
456 and argument on all issues involved.

457 [(b) Persons not named as parties or intervenors may, in the  
458 discretion of the presiding officer, be given an opportunity to present

459 oral or written statements. The presiding officer may require any such  
460 statement to be given under oath or affirmation.]

461 Sec. 19. Section 4-178 of the general statutes is repealed and the  
462 following is substituted in lieu thereof (*Effective October 1, 2008*):

463 In contested cases: (1) Any oral or documentary evidence may be  
464 received, but the [agency] presiding officer shall, as a matter of policy,  
465 provide for the exclusion of irrelevant, immaterial or unduly  
466 repetitious evidence; (2) [agencies shall give effect to] the rules of  
467 privilege recognized by law shall be given effect; (3) when a hearing  
468 will be expedited and the interests of the parties will not be prejudiced  
469 substantially, any part of the evidence may be received in written  
470 form; (4) documentary evidence may be received in the form of copies  
471 or excerpts, if the original is not readily available, and upon request,  
472 parties and the agency, including an agency conducting the  
473 proceeding, shall be given an opportunity to compare the copy with  
474 the original; (5) a party and [such] the agency, including an agency  
475 conducting the proceeding, may conduct cross-examinations required  
476 for a full and true disclosure of the facts; (6) notice may be taken of  
477 judicially cognizable facts; [and of] (7) in a proceeding conducted by  
478 the agency or in an agency review of a proposed final decision, notice  
479 may be taken of generally recognized technical or scientific facts  
480 within the agency's specialized knowledge; [(7)] (8) parties shall be  
481 notified in a timely manner of any material noticed, including any  
482 agency memoranda or data, and they shall be afforded an opportunity  
483 to contest the material so noticed; and [(8) the agency's] (9) in a  
484 proceeding conducted by the agency or in an agency review of a  
485 proposed final decision, the agency may use its experience, technical  
486 competence [,] and specialized knowledge [may be used] in the  
487 evaluation of the evidence.

488 Sec. 20. Section 4-178a of the general statutes is repealed and the  
489 following is substituted in lieu thereof (*Effective October 1, 2008*):

490 If a hearing in a contested case or in a declaratory ruling proceeding  
491 is held before a hearing officer or before less than a majority of the



492 members of the agency who are authorized by law to render a final  
493 decision, a party, if permitted by regulation and before rendition of the  
494 final decision, may request a review by a majority of the members of  
495 the agency, of any preliminary, procedural or evidentiary ruling made  
496 at the hearing. The majority of the members may make an appropriate  
497 order, including the reconvening of the hearing. The provisions of this  
498 section do not apply to a hearing conducted by an administrative law  
499 adjudicator.

500 Sec. 21. Section 4-179 of the general statutes is repealed and the  
501 following is substituted in lieu thereof (*Effective October 1, 2008*):

502 (a) When, in an agency proceeding that is not conducted by an  
503 administrative law adjudicator, a majority of the members of the  
504 agency who are to render the final decision have not heard the matter  
505 or read the record, the decision, if adverse to a party, shall not be  
506 rendered until a proposed final decision is served upon the parties,  
507 and an opportunity is afforded to each party adversely affected to file  
508 exceptions and present briefs and oral argument to the members of the  
509 agency who are to render the final decision.

510 (b) A proposed final decision made under this section shall be in  
511 writing and [contain a statement of the reasons for the decision and a  
512 finding of facts and conclusion of law on each issue of fact or law  
513 necessary to the decision] shall comply with the requirements of  
514 subsection (c) of section 4-180, as amended by this act.

515 (c) Except when authorized by law to render a final decision for an  
516 agency, a hearing officer shall, after hearing a matter, make a proposed  
517 final decision.

518 (d) The parties and the agency conducting the proceeding, by  
519 written stipulation, may waive compliance with this section.

520 Sec. 22. (NEW) (*Effective October 1, 2008*) (a) A proposed final  
521 decision rendered by an administrative law adjudicator shall be  
522 delivered promptly to each party or the party's authorized

523 representative, and to the agency, personally or by United States mail,  
524 certified or registered, postage prepaid, return receipt requested. After  
525 such proposed final decision is rendered, the record in the contested  
526 case shall be delivered promptly to the agency.

527 (b) A proposed final decision rendered by an administrative law  
528 adjudicator shall become a final decision of the agency unless the head  
529 of the agency, not later than twenty-one days following the date the  
530 proposed final decision is delivered or mailed to the agency, modifies  
531 or rejects the proposed final decision, provided the head of the agency  
532 may, before expiration of such time period and for good cause, certify  
533 the extension of such time period for not more than an additional  
534 twenty-one days. If the head of the agency modifies or rejects the  
535 proposed final decision, the head of the agency shall state the reason  
536 for the modification or rejection on the record. In reviewing a proposed  
537 final decision rendered by an administrative law adjudicator, the head  
538 of the agency may afford each party, including the agency, an  
539 opportunity to present briefs and may afford each party, including the  
540 agency, an opportunity to present oral argument.

541 (c) If, within the time period provided in subsection (b) of this  
542 section, the head of the agency, in reviewing a proposed final decision  
543 rendered by an administrative law adjudicator, determines that  
544 additional evidence is necessary, the head of the agency shall refer the  
545 matter to the Office of Administrative Hearings. The Chief  
546 Administrative Law Adjudicator shall assign the administrative law  
547 adjudicator who rendered such proposed final decision to take the  
548 additional evidence unless such administrative law adjudicator is  
549 unavailable. After taking the additional evidence, the administrative  
550 law adjudicator shall, not later than thirty days following such referral,  
551 prepare a proposed final decision as provided in this section based on  
552 such additional evidence and the record of the prior hearing.

553 (d) A proposed final decision made under this section shall be in  
554 writing and shall comply with the requirements of subsection (c) of  
555 section 4-180 of the general statutes, as amended by this act.

556 Sec. 23. Section 4-180 of the general statutes is repealed and the  
557 following is substituted in lieu thereof (*Effective October 1, 2008*):

558 (a) Each agency and administrative law adjudicator shall proceed  
559 with reasonable dispatch to conclude any matter pending before [it]  
560 such agency or administrative law adjudicator and, in all hearings of  
561 contested cases conducted by the agency or the administrative law  
562 adjudicator, shall render a final decision within ninety days following  
563 the close of evidence or the due date for the filing of briefs, whichever  
564 is later. [, in such proceedings.]

565 (b) If, in any contested case, any agency or administrative law  
566 adjudicator fails to comply with the provisions of subsection (a) of this  
567 section, [in any contested case, any party thereto] any party to such  
568 contested case may apply to the superior court for the judicial district  
569 of [Hartford] New Britain for an order requiring the agency or  
570 administrative law adjudicator to render a proposed final decision or a  
571 final decision forthwith. The court, after hearing, shall issue an  
572 appropriate order.

573 (c) A final decision in a contested case shall be in writing or, if there  
574 is no proposed final decision, orally stated on the record. [and, if  
575 adverse to a party,] A proposed final decision and a final decision in a  
576 contested case shall include [the agency's] findings of fact and  
577 conclusions of law necessary to [its] the decision and shall be made by  
578 applying all pertinent provisions of law. Findings of fact shall be based  
579 exclusively on the evidence in the record and on matters noticed. The  
580 [agency shall state in] proposed final decision and the final decision  
581 shall contain the name of each party and the most recent mailing  
582 address, provided to the agency, of the party or [his] the party's  
583 authorized representative. If the final decision is orally stated on the  
584 record, each such name and mailing address shall be included in the  
585 record.

586 (d) The final decision shall be delivered promptly to each party or  
587 [his] the party's authorized representative and, in the case of a final  
588 decision by an administrative law adjudicator authorized by law to

589 render such decision, to the agency, personally or by United States  
590 mail, certified or registered, postage prepaid, return receipt requested.  
591 [The] An agency rendering a final decision shall immediately transmit  
592 a copy of such decision to the Office of Administrative Hearings. A  
593 proposed final decision that becomes a final decision because of  
594 agency inaction, as provided in subsection (b) of section 22 of this act,  
595 shall become effective at the expiration of the time period specified in  
596 said subsection or on a later date specified in such proposed final  
597 decision. Any other final decision shall be effective when personally  
598 delivered or mailed or on a later date specified [by the agency] in such  
599 final decision. The date of delivery or mailing of a proposed final  
600 decision and a final decision shall be endorsed on the front of the  
601 decision or on a transmittal sheet included with the decision.

602       Sec. 24. Subsection (a) of section 4-181 of the general statutes is  
603 repealed and the following is substituted in lieu thereof (*Effective*  
604 *October 1, 2008*):

605       (a) Unless required for the disposition of ex parte matters  
606 authorized by law, no hearing officer, administrative law adjudicator  
607 or member of an agency who, in a contested case, is to render a final  
608 decision or to make a proposed final decision shall communicate,  
609 directly or indirectly, in connection with any issue of fact, with any  
610 person or party, or, in connection with any issue of law, with any party  
611 or the party's representative, without notice and opportunity for all  
612 parties to participate.

613       Sec. 25. Section 4-181a of the general statutes is repealed and the  
614 following is substituted in lieu thereof (*Effective October 1, 2008*):

615       (a) (1) Unless otherwise provided by law, a party or the agency in a  
616 contested case may, within fifteen days after the personal delivery or  
617 mailing of the final decision or within fifteen days after the date that a  
618 proposed final decision becomes a final decision because of agency  
619 inaction, as provided in subsection (b) of section 22 of this act, file with  
620 the [agency] authority that rendered the final decision a petition for  
621 reconsideration of the decision on the ground that: (A) An error of fact

622 or law should be corrected; (B) new evidence has been discovered  
623 which materially affects the merits of the case and which for good  
624 reasons was not presented in the agency proceeding; or (C) other good  
625 cause for reconsideration has been shown. Within twenty-five days of  
626 the filing of the petition, [the agency] such authority shall decide  
627 whether to reconsider the final decision. The failure of [the agency]  
628 such authority to make [that] such determination within twenty-five  
629 days of such filing shall constitute a denial of the petition.

630 (2) Within forty days of the personal delivery or mailing of the final  
631 decision, the [agency] authority that rendered the final decision,  
632 regardless of whether a petition for reconsideration has been filed,  
633 may decide to reconsider the final decision.

634 (3) If the [agency] authority that rendered the final decision decides  
635 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of  
636 this subsection, [the agency] such authority shall proceed in a  
637 reasonable time to conduct such additional proceedings as may be  
638 necessary to render a decision modifying, affirming or reversing the  
639 final decision, provided such decision made after reconsideration shall  
640 be rendered not later than ninety days following the date on which  
641 [the agency] such authority decides to reconsider the final decision. If  
642 [the agency] such authority fails to render such decision made after  
643 reconsideration within such ninety-day period, the original final  
644 decision shall remain the final decision in the contested case for  
645 purposes of any appeal under the provisions of section 4-183, as  
646 amended by this act.

647 (4) Except as otherwise provided in subdivision (3) of this  
648 subsection, [an agency] a decision made after reconsideration pursuant  
649 to this subsection shall become the final decision in the contested case  
650 in lieu of the original final decision for purposes of any appeal under  
651 the provisions of section 4-183, as amended by this act, including, but  
652 not limited to, an appeal of (A) any issue decided by the [agency]  
653 authority that rendered the final decision in its original final decision  
654 that was not the subject of any petition for reconsideration or [the

655 agency's] such authority's decision made after reconsideration, (B) any  
656 issue as to which reconsideration was requested but not granted, and  
657 (C) any issue that was reconsidered but not modified by [the agency]  
658 such authority from the determination of such issue in the original  
659 final decision.

660 (b) On a showing of changed conditions, the [agency] authority that  
661 rendered the final decision may reverse or modify the final decision, at  
662 any time, at the request of any person or on [the agency's] such  
663 authority's own motion. The procedure set forth in this chapter for  
664 contested cases shall be applicable to any proceeding in which such  
665 reversal or modification of any final decision is to be considered. The  
666 party or parties who were the subject of the original final decision, or  
667 their successors, if known, and intervenors in the original contested  
668 case, shall be notified of the proceeding and shall be given the  
669 opportunity to participate in the proceeding. Any decision to reverse  
670 or modify a final decision shall make provision for the rights or  
671 privileges of any person who has been shown to have relied on such  
672 final decision.

673 (c) The [agency] authority that rendered the final decision may,  
674 without further proceedings, modify a final decision to correct any  
675 clerical error. A person may appeal [that] such modification under the  
676 provisions of section 4-183, as amended by this act, or, if an appeal is  
677 pending when the modification is made, may amend the appeal.

678 (d) For the purposes of this section and section 4-183, as amended  
679 by this act, in the case of a proposed final decision that becomes a final  
680 decision because of agency inaction, as provided in subsection (b) of  
681 section 22 of this act, the authority that rendered the final decision  
682 shall be deemed to be the agency.

683 Sec. 26. Section 4-183 of the general statutes is repealed and the  
684 following is substituted in lieu thereof (*Effective October 1, 2008*):

685 (a) A person who has exhausted all administrative remedies  
686 available within the agency and who is aggrieved by a final decision

687 may appeal to the Superior Court as provided in this section. The filing  
688 of a petition for reconsideration is not a prerequisite to the filing of  
689 such an appeal.

690 (b) A person may appeal a preliminary, procedural or intermediate  
691 agency action or ruling to the Superior Court if (1) it appears likely that  
692 the person will otherwise qualify under this chapter to appeal from the  
693 final agency action or ruling, and (2) postponement of the appeal  
694 would result in an inadequate remedy.

695 (c) (1) Within forty-five days after mailing of the final decision  
696 under section 4-180, as amended by this act, or, if there is no mailing,  
697 within forty-five days after personal delivery of the final decision  
698 under said section, or (2) within forty-five days after the [agency]  
699 authority that rendered the final decision denies a petition for  
700 reconsideration of the final decision pursuant to subdivision (1) of  
701 subsection (a) of section 4-181a, as amended by this act, or (3) within  
702 forty-five days after mailing of the final decision made after  
703 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)  
704 of section 4-181a, as amended by this act, or, if there is no mailing,  
705 within forty-five days after personal delivery of the final decision  
706 made after reconsideration pursuant to said subdivisions, or (4) within  
707 forty-five days after the expiration of the ninety-day period required  
708 under subdivision (3) of subsection (a) of section 4-181a, as amended  
709 by this act, if [the agency] such authority decides to reconsider the final  
710 decision and fails to render a decision made after reconsideration  
711 within such period, or (5) if a proposed final decision becomes a final  
712 decision because of agency inaction, as provided in subsection (b) of  
713 section 22 of this act, within forty-five days after the decision becomes  
714 final, whichever is applicable and is later, a person appealing as  
715 provided in this section shall serve a copy of the appeal on the agency  
716 [that rendered the final decision] at its office or at the office of the  
717 Attorney General in Hartford and file the appeal with the clerk of the  
718 superior court for the judicial district of New Britain or for the judicial  
719 district wherein the person appealing resides or, if [that] such person is  
720 not a resident of this state, with the clerk of the court for the judicial

721 district of New Britain. An appeal of a final decision under this section  
722 shall be taken within such applicable forty-five-day period regardless  
723 of the effective date of the final decision. Within [that] such time, the  
724 person appealing shall also serve a copy of the appeal on each party  
725 listed in the final decision at the address shown in the decision,  
726 provided failure to make such service within forty-five days on parties  
727 other than the agency [that rendered the final decision] shall not  
728 deprive the court of jurisdiction over the appeal. Service of the appeal  
729 shall be made by United States mail, certified or registered, postage  
730 prepaid, return receipt requested, without the use of a state marshal or  
731 other officer, or by personal service by a proper officer or indifferent  
732 person making service in the same manner as complaints are served in  
733 ordinary civil actions. If service of the appeal is made by mail, service  
734 shall be effective upon deposit of the appeal in the mail.

735 (d) The person appealing, not later than fifteen days after filing the  
736 appeal, shall file or cause to be filed with the clerk of the court an  
737 affidavit, or the state marshal's return, stating the date and manner in  
738 which a copy of the appeal was served on each party and on the  
739 agency [that rendered the final decision,] and, if service was not made  
740 on a party, the reason for failure to make service. If the failure to make  
741 service causes prejudice to any party to the appeal or to the agency, the  
742 court, after hearing, may dismiss the appeal.

743 (e) If service has not been made on a party, the court, on motion,  
744 shall make such orders of notice of the appeal as are reasonably  
745 calculated to notify each party not yet served.

746 (f) The filing of an appeal shall not, of itself, stay enforcement of [an  
747 agency] a final decision. An application for a stay may be made to the  
748 agency, to the court or to both. Filing of an application with the agency  
749 shall not preclude action by the court. A stay, if granted, shall be on  
750 appropriate terms.

751 (g) Within thirty days after the service of the appeal, or within such  
752 further time as may be allowed by the court, the agency shall  
753 transcribe any portion of the record that has not been transcribed and



754 transmit to the reviewing court the original or a certified copy of the  
755 entire record of the proceeding appealed from, which shall include the  
756 [agency's] findings of fact and conclusions of law, separately stated. By  
757 stipulation of all parties to such appeal proceedings, the record may be  
758 shortened. A party unreasonably refusing to stipulate to limit the  
759 record may be taxed by the court for the additional costs. The court  
760 may require or permit subsequent corrections or additions to the  
761 record.

762 (h) If, before the date set for hearing on the merits of an appeal,  
763 application is made to the court for leave to present additional  
764 evidence, and it is shown to the satisfaction of the court that the  
765 additional evidence is material and that there were good reasons for  
766 failure to present it in the proceeding before the [agency] authority that  
767 rendered the final decision, the court may order that the additional  
768 evidence be taken before [the agency] such authority upon conditions  
769 determined by the court. [The agency] Such authority may modify its  
770 findings and decision by reason of the additional evidence and shall  
771 file [that] such evidence and any modifications, new findings [,] or  
772 decisions with the reviewing court.

773 (i) [The] Except as otherwise provided by law, the appeal shall be  
774 conducted by the court without a jury and shall be confined to the  
775 record. If alleged irregularities in procedure before the [agency]  
776 presiding officer are not shown in the record or if facts necessary to  
777 establish aggrievement are not shown in the record, proof limited  
778 thereto may be taken in the court. The court, upon request, shall hear  
779 oral argument and receive written briefs.

780 (j) [The] Unless a different standard of review is provided by law,  
781 the court shall not substitute its judgment for that of the [agency]  
782 authority that rendered the final decision as to the weight of the  
783 evidence on questions of fact. The court shall affirm the final decision  
784 [of the agency] unless the court finds that substantial rights of the  
785 person appealing have been prejudiced because the administrative  
786 findings, inferences, conclusions [,] or decisions are: (1) In violation of

787 constitutional or statutory provisions; (2) in excess of the statutory  
788 authority of the agency; (3) made upon unlawful procedure; (4)  
789 affected by other error of law; (5) clearly erroneous in view of the  
790 reliable, probative [,] and substantial evidence on the whole record; or  
791 (6) arbitrary or capricious or characterized by abuse of discretion or  
792 clearly unwarranted exercise of discretion. If the court finds such  
793 prejudice, [it] the court shall sustain the appeal and, if appropriate,  
794 may render a judgment under subsection (k) of this section or remand  
795 the case for further proceedings. For the purposes of this section, a  
796 remand is a final judgment.

797 (k) If a particular agency action is required by law, the court, on  
798 sustaining the appeal, may render a judgment that modifies the  
799 [agency] final decision, orders the particular agency action, or orders  
800 the agency to take such action as may be necessary to effect the  
801 particular action.

802 (l) In all appeals taken under this section, costs may be taxed in  
803 favor of the prevailing party in the same manner, and to the same  
804 extent, that costs are allowed in judgments rendered by the Superior  
805 Court. No costs shall be taxed against the state, except as provided in  
806 section 4-184a.

807 (m) In any case in which a person appealing claims that [he] such  
808 person cannot pay the costs of an appeal under this section, [he] such  
809 person shall, within the time permitted for filing the appeal, file with  
810 the clerk of the court to which the appeal is to be taken an application  
811 for waiver of payment of such fees, costs and necessary expenses,  
812 including the requirements of bond, if any. The application shall  
813 conform to the requirements prescribed by rule of the judges of the  
814 Superior Court. After such hearing as the court determines is  
815 necessary, the court shall render its judgment on the application,  
816 which judgment shall contain a statement of the facts the court has  
817 found, with its conclusions thereon. The filing of the application for the  
818 waiver shall toll the time limits for the filing of an appeal until such  
819 time as a judgment on such application is rendered.

820 Sec. 27. Subsection (e) of section 1-82a of the general statutes is  
821 repealed and the following is substituted in lieu thereof (*Effective*  
822 *October 1, 2008*):

823 (e) The judge trial referee shall make public a finding of probable  
824 cause not later than five business days after any such finding. At such  
825 time the entire record of the investigation shall become public, except  
826 that the Office of State Ethics may postpone examination or release of  
827 such public records for a period not to exceed fourteen days for the  
828 purpose of reaching a stipulation agreement pursuant to subsection  
829 [(c)] (d) of section 4-177, as amended by this act. Any such stipulation  
830 agreement or settlement shall be approved by a majority of those  
831 members present and voting.

832 Sec. 28. Subsection (e) of section 1-93a of the general statutes is  
833 repealed and the following is substituted in lieu thereof (*Effective*  
834 *October 1, 2008*):

835 (e) The judge trial referee shall make public a finding of probable  
836 cause not later than five business days after any such finding. At such  
837 time, the entire record of the investigation shall become public, except  
838 that the Office of State Ethics may postpone examination or release of  
839 such public records for a period not to exceed fourteen days for the  
840 purpose of reaching a stipulation agreement pursuant to subsection  
841 [(c)] (d) of section 4-177, as amended by this act. Any stipulation  
842 agreement or settlement entered into for a violation of this part shall be  
843 approved by a majority of its members present and voting.

844 Sec. 29. (*Effective October 1, 2008*) On or before January 6, 2010, the  
845 Chief Administrative Law Adjudicator appointed pursuant to section 2  
846 of this act shall submit to the joint standing committee of the General  
847 Assembly having cognizance of matters relating to the judiciary a  
848 feasibility analysis and implementation plan for the transfer of  
849 contested cases conducted by the Department of Social Services to the  
850 Office of Administrative Hearings.

851 Sec. 30. Subsection (a) of section 46a-57 of the general statutes is

852 repealed and the following is substituted in lieu thereof (*Effective July*  
853 *1, 2008*):

854 (a) (1) The Governor shall appoint three human rights referees for  
855 terms commencing October 1, 1998, and four human rights referees for  
856 terms commencing January 1, 1999. The human rights referees so  
857 appointed shall serve for a term of one year.

858 (2) (A) On and after October 1, 1999, the Governor shall appoint  
859 seven human rights referees with the advice and consent of both  
860 houses of the General Assembly. The Governor shall appoint three  
861 human rights referees to serve for a term of two years commencing  
862 October 1, 1999. The Governor shall appoint four human rights  
863 referees to serve for a term of three years commencing January 1, 2000.  
864 Thereafter, human rights referees shall serve for a term of three years.

865 (B) On and after July 1, 2001, there shall be five human rights  
866 referees. Each of the human rights referees serving on July 1, 2001,  
867 shall complete the term to which such referee was appointed.  
868 Thereafter, human rights referees shall be appointed by the Governor,  
869 with the advice and consent of both houses of the General Assembly,  
870 to serve for a term of three years.

871 (C) On and after July 1, 2004, there shall be seven human rights  
872 referees. Each of the human rights referees serving on July 1, 2004,  
873 shall complete the term to which such referee was appointed and shall  
874 serve until his successor is appointed and qualified. Thereafter, human  
875 rights referees shall be appointed by the Governor, with the advice and  
876 consent of both houses of the General Assembly, to serve for a term of  
877 three years.

878 (D) On and after July 1, 2008, there shall be six human rights  
879 referees. Each of the human rights referees serving on July 1, 2008,  
880 shall complete the term for which such referee was appointed.  
881 Thereafter, human rights referees shall be appointed by the Governor,  
882 with the advice and consent of both houses of the General Assembly,  
883 to serve for a term of three years.

884 (3) When the General Assembly is not in session, any vacancy shall  
 885 be filled pursuant to the provisions of section 4-19. The Governor may  
 886 remove any human rights referee for cause.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	New section
Sec. 2	<i>July 1, 2008</i>	New section
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	New section
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	New section
Sec. 8	<i>October 1, 2008</i>	New section
Sec. 9	<i>July 1, 2008</i>	New section
Sec. 10	<i>July 1, 2008</i>	New section
Sec. 11	<i>July 1, 2008</i>	2c-2b(e)
Sec. 12	<i>October 1, 2008</i>	4-166
Sec. 13	<i>October 1, 2008</i>	4-176(g)
Sec. 14	<i>October 1, 2008</i>	4-176e
Sec. 15	<i>October 1, 2008</i>	4-177
Sec. 16	<i>October 1, 2008</i>	4-177a
Sec. 17	<i>October 1, 2008</i>	4-177b
Sec. 18	<i>October 1, 2008</i>	4-177c
Sec. 19	<i>October 1, 2008</i>	4-178
Sec. 20	<i>October 1, 2008</i>	4-178a
Sec. 21	<i>October 1, 2008</i>	4-179
Sec. 22	<i>October 1, 2008</i>	New section
Sec. 23	<i>October 1, 2008</i>	4-180
Sec. 24	<i>October 1, 2008</i>	4-181(a)
Sec. 25	<i>October 1, 2008</i>	4-181a
Sec. 26	<i>October 1, 2008</i>	4-183
Sec. 27	<i>October 1, 2008</i>	1-82a(e)
Sec. 28	<i>October 1, 2008</i>	1-93a(e)
Sec. 29	<i>October 1, 2008</i>	New section
Sec. 30	<i>July 1, 2008</i>	46a-57(a)

**GAE** Joint Favorable Subst.

***Statement of Legislative Commissioners:***

In section 3(7) the word "provisions" was inserted in the second sentence, in section 4(e)(1)(A) the words "they had" were substituted for "in which they are placed", in section 6 subsection (b) was deleted, and in section 7 the words "to the administrative law adjudicator" were deleted in the fourth sentence and the last two sentences were merged, for clarity and statutory consistency.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Office of Administrative Hearings	GF - Cost	463,018	418,753
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	55,796	68,355
Department of Public Works or Office of Administrative Hearings	GF - Potential Cost	285,000	185,000
Human Rights & Opportunities, Com.	GF - Savings	86,000	86,000

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill results in significant cost to establish a new state agency, the Office of Administrative Hearings (OAH). Two additional positions<sup>2</sup> and office space to house approximately eighteen staff members would be required under the bill. In addition, it is anticipated that a state cost would be incurred to raise the salaries of hearing officers once they are designated as administrative law adjudicators under the bill and subject to the bill's stricter credentials.<sup>3</sup> Fringe benefits, training and education, and other expenses (e.g., court reporting, equipment leases) to run the new office would also be incurred.<sup>4</sup> These expenses would

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

<sup>2</sup> 1 Chief Administrative Law Adjudicator Salary = \$117,061; 1 Administrative Assistant Salary = \$46,750.

<sup>3</sup> Estimated annual cost for the salary differential of 14 hearing officers = \$75,000.

<sup>4</sup> The office expenses are based on the actual costs of a state agency of similar size, the Freedom of Information Commission. (FY 07 = \$180,000)

be incurred regardless of whether or not additional office space is required. (See below.)

### Transfer of Personnel

The bill reassigns hearing officers and support staff from the Commission on Human Rights and Opportunities, Department of Children and Families, and Department of Transportation. It is estimated that sixteen staff members would be reassigned to the OAH under this provision. These reassignments would necessitate the transfer of approximately \$1 million from these state agencies to the OAH in order to support the salaries of these transferred staff members.

### Office Space

Assuming that the agency is not located in existing state-owned office space, there will be a General Fund cost to lease office space, which is summarized in the table below:

<b>Estimated Lease Costs<sup>1</sup> for the Office of Administrative Hearings</b>					
	Year				
<u>Expenditure</u>	<u>FY 09</u>	<u>FY 10</u>	<u>FY 11</u>	<u>FY 12</u>	<u>FY 13</u>
Annual rent payment	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000
Capitalized fit out costs <sup>2</sup>	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Annual operating cost <sup>3</sup>	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
One time costs - Moving, furniture, telecommunications equipment	\$100,000	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$285,000</b>	<b>\$185,000</b>	<b>\$185,000</b>	<b>\$185,000</b>	<b>\$185,000</b>

<sup>1</sup> These estimates were provided by the Department of Public Works.

<sup>2</sup> Fit out costs are the costs associated with configuring the office space to meet the tenant's needs, including office partitions and electrical, telecommunications and computer wiring. They are incurred in the first year before the agency moves into the leased space and are usually capitalized over the 5-year life of the lease.

<sup>3</sup> Annual operating costs include utilities, heating and cooling, taxes and cleaning services.

If the agency is located in the City of Hartford, the costs listed above will fall under the budget of the Department of Public Works because DPW has care and control of state-occupied office space in the city. If the agency is located outside of DPW's area of responsibility, the leasing costs will be incurred by the Department of Administrative Hearings.



Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will result in budgetary savings to offset the certain costs indicated above.

### **CHRO Savings**

The bill eliminates one Human Rights Referee position within the Commission on Human Rights and Opportunities (CHRO). This position is funded at \$86,000 annually, although it is currently vacant.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future, subject to the scheduled sunset of OAH in 2014.

**OLR Bill Analysis****sSB 201*****AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes an Office of Administrative Hearings (OAH) as a demonstration project that terminates on July 1, 2014 unless it is reestablished. OAH will have its central office in Hartford County. The bill requires OAH to conduct contested case hearings for the Commission on Human Rights and Opportunities and the departments of children and families and transportation. The bill transfers certain personnel, including hearing officers, from these agencies to OAH.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedures Act (UAPA). After the hearings, the bill requires OAH to issue a proposed final decision or final decision, if allowed or required by law. Any proposed final decision may be rejected, modified, or accepted by the referring agency. It becomes final if the agencies fail to act within a specified period.

The bill makes several changes to the UAPA. Most of the changes are conforming ones made necessary by the new office's role in contested cases.

The bill reduces the number of human rights referees from seven to six beginning July 1, 2008. Each referee serving on that date must complete his or her term. Thereafter, just as under current law, the governor appoints the referees with the advice and consent of the General Assembly, to serve three-year terms.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2008, except the following provisions are effective July 1, 2008 (1) establishing the OAH, (2) requiring the appointment of a chief administrative law adjudicator and spelling out his or her duties, (3) prohibiting the office from hearing certain cases, (4) authorizing the governor to exempt certain agencies from the referral requirement, (5) requiring the office to terminate, and (6) reducing the number of human rights referees.

## **OFFICE OF ADMINISTRATIVE HEARINGS**

### ***Staff***

***Chief Administrative Law Adjudicator.*** The bill requires the governor to appoint a chief administrative law adjudicator (ALA) to serve as the office's full-time chief executive officer for an initial term that expires March 1, 2009. Thereafter, she must appoint the chief ALA, with legislative approval, to a four-year term or until a successor is appointed and qualified. The chief ALA must take the same oath of office as legislators and executive and judicial officers. A sitting chief ALA is eligible for reappointment. The governor may remove the chief ALA for good cause.

The chief ALA must be admitted to the Connecticut bar for at least 10 years, have knowledge of administrative law, and refrain from the private practice of law. The chief ALA is exempt from the classified service.

The chief ALA has all the powers specifically granted by law and any additional powers that are reasonable and necessary for him or her to carry out his or her duties, including the powers and duties of executive branch agency department heads. Additionally, the chief ALA has all the powers and duties of an ALA.

The chief ALA must:

1. assign an ALA to hear each case referred to OAH and, where practicable, base the assignment on expertise in the legal issues

or general subject matter of the proceeding;

2. prepare a proposed final decision or, where applicable, a final decision that keeps protected information, including the identity of any person or party, confidential if required by law, regulations, or court order;
3. collect, compile, and prepare statistics and other data on OAH's operations and annually report to the governor and the legislature on such operations, including the number of (a) hearings initiated, (b) proposed final decisions rendered, (c) partial or total reversals of such decisions by the agencies, (d) final decisions rendered, and (e) proceedings pending;
4. study all aspects of administrative adjudication and develop recommendations to promote impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested cases;
5. adopt implementing regulations, including regulations to carry out applicable provisions of the UAPA regarding contested case hearings and related OAH policies;
6. develop and implement a program for (a) the continuing education of ALAs in procedural due process and the substantive law of their referring agencies and (b) training ancillary personnel; and
7. index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions, and final decisions available for public inspection and copying electronically as the Freedom of Information Act requires.

The bill specifies that any regulations the office adopts on contested cases it hears supersede any inconsistent agency regulations, policies, or procedures, except those mandated by state or federal law. The regulations must include standard time limits for agency action in contested cases and standards for giving hearing notices, scheduling

hearings, and assigning ALAs.

**Other Staff.** As the office's chief executive officer, the chief ALA can hire staff. The bill transfers to OAH certain full-time and permanent part-time employees from the agencies whose cases the office will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, including human rights referees, staff attorneys, hearing adjudicators, and hearing officers, and (2) providing administrative services required for conducting the hearings and issuing the decisions.

Each ALA, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. All ALAs must be knowledgeable in administrative law. ALAs have the powers granted to hearing officers and presiding officers.

**Job Classifications and Benefits.** The chief ALA, ALAs, assistants, and other OAH employees (1) are entitled to the same fringe benefits as other state employees, (2) are included in state employees' disability and retirement programs, and (3) receive full retirement credit for work completed each year or portion thereof for which retirement benefits are paid.

Transferees and chief ALA appointees are in the classified service and covered by collective bargaining. Those transferred employees who are members of an employee organization at the time of their transfer continue to be represented by that organization.

Transferred employees cannot have their seniority, salaries, or benefits reduced because of the transfer. They get credit for time served in other agencies.

Transferred employees who are members of a collective bargaining unit at the time of their transfer remain the beneficiaries of any existing and applicable memorandum of understanding (MOU) between the Office of Labor Relations and any collective bargaining representative

for state employees. These employees cannot lose the job classifications they had when they were transferred. And no promotions governed by any existing MOU between the Office of Labor Relations and any collective bargaining representative for these employees can be denied, delayed, impaired, or eliminated because of OAH's establishment or the transfer of personnel to it. MOU provisions on the rights and obligations of staff attorneys also apply to transferred ALAs.

Transferees who are not members of a collective bargaining unit at the time of their transfer and employees the chief ALA hires must (1) have the same job classifications as transferees who are members of a collective bargaining unit at the time of their transfer and (2) be subject to, and become the beneficiaries of, the terms of any existing and applicable MOU between the Office of Labor Relations and any collective bargaining representative for state employees, including the rights and obligations contained in any MOU that applies to staff attorneys.

An ALA, assistant, or other OAH employee who is removed, suspended, demoted, or subjected to disciplinary action or other adverse employment action may appeal the action in accordance with the applicable collective bargaining agreement.

### ***Types of Cases Heard***

Beginning October 1, 2008, the bill requires OAH to conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the:

1. Department of Children and Families (DCF);
2. Department of Transportation; and
3. Commission on Human Rights and Opportunities, including allegations of retaliation against whistleblowers.

On that same date, the powers, functions, and duties of the referring

agencies with respect to their contested cases transfer to OAH. Additionally, DCF must execute any requisite contract with OAH necessary to maintain and secure any federal or state funding or reimbursement. However, the bill requires any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases of the type to be referred to complete their cases unless the chief ALA decides to reassign the cases to ALAs. Beginning October 1, 2011, the governor may, for good cause and at an agency's request, exempt an agency from the requirement for OAH to hear its contested cases.

Any other agency can, with the chief ALA's consent, refer contested cases to OAH for mediation, settlement, or a full adjudication. The powers, functions, and duties of these agencies transfer on the dates of the referrals.

By January 6, 2010, the bill requires the chief ALA to submit to the Judiciary Committee a feasibility analysis and implementation plan for the transfer of contested cases conducted by the Department of Social Services to OAH.

The bill specifies that its section on the types of transferred cases OAH hears, the people allowed to hear them, and their powers and duties do not apply to the State Board of Mediation and Arbitration or the State Board of Labor Relations.

### ***Hearings***

The bill requires agencies that refer their cases to OAH to certify the official record in each case, and give the parties notice of the referral and that an ALA will set the time and place of the hearings. OAH must give the notice and also include in it the nature of the hearing. Thereafter, a party must file all documents that are to become part of such record with OAH. Filing these documents with the agency, rather than with OAH, is not a jurisdictional defect and is not grounds for termination of the proceeding. However, the ALA may assess appropriate costs and sanctions against a party who misfiles such

documents on a showing of prejudice resulting from a willful misfiling. OAH must maintain the official record of a contested case referred to it.

An ALA assigned by the chief ALA must hear, mediate, or settle any contested case before OAH. The bill prohibits the chief ALA from assigning an ALA to hear (1) a contested case that federal law requires to be conducted by a specific agency or other hearing authority or (2) any matter conducted by an agency head or at least one member of a multimember agency.

The bill requires ALAs to conduct hearings in accordance with the bill and the UAPA. This means, among other things, that the UAPA's definitions apply to all contested cases conducted by OAH.

If a contested case is not resolved through mediation or settlement, either party may proceed to a hearing. An ALA who attempts to settle or mediate a matter may not thereafter be assigned to hear it. An ALA must dismiss any case resolved by stipulation, agreed settlement, or consent order. The order of dismissal must incorporate by reference and have attached to it the stipulation, agreed settlement, or consent order. The order must further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. A party may petition the New Britain Superior Court to enforce the order and stipulation, agreed settlement, or consent order and for appropriate relief or a restraining order.

### ***Proposed and Final Decisions (§ 22)***

An ALA's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and be delivered, either personally or by registered or certified mail, return receipt requested, promptly to each party or the party's authorized representative and to the agency. After the ALA renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALA's proposed final decision becomes the agency's final decision unless the agency head modifies or rejects it within 21 days



after it is delivered or mailed. The agency head may, before the expiration of the period and for good cause, extend the 21-day deadline for up to 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is delivered or mailed or at a later date specified in the proposed final decision. In this case, a party or the agency has 15 days after the proposed decision becomes final to ask for reconsideration. This apparently gives the agency issuing the final decision the authority to ask itself for reconsideration. A person appealing the decision has 45 days after it becomes final to serve a copy of the appeal on the agency or the attorney general's Hartford office and file the appeal (see below).

When reviewing an ALA's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and present oral argument. If the agency head determines that additional evidence is necessary, he or she must refer the matter to OAH. The chief ALA must assign the ALA who rendered the proposed decision to take the additional evidence unless the ALA is unavailable. The ALA has 30 days after the referral to take the additional evidence and prepare a proposed final decision based on it and the record of the prior hearing.

If the head of the agency modifies or rejects the proposed final decision, he or she must state the reason for doing so on the record. An agency must immediately transmit to OAH a copy of any final decision it renders, apparently regardless to whether the new office has jurisdiction over the matter.

### ***Definitions (§ 12)***

The bill amends the definition of terms defined under the UAPA as necessary to conform to the bill, extends the definitions to the bill unless the context requires otherwise, and defines ALA and head of agency under the UAPA. For example, a "contested case," in addition to being a proceeding in which the legal rights, duties, or privileges of a party are required by state statute or regulation to be determined by

an agency, also means such proceedings determined by OAH. “Hearing officer” continues to mean a person appointed by an agency to conduct a hearing in an agency proceeding unless the proceeding is conducted by an ALA. “Final decision” means, among other things, an agency or OAH determination in a contested case.

The bill defines “administrative law adjudicator” as an administrative law judge (ALJ) transferred or hired as specified under the bill and “head of the agency” as the individual or group of individuals constituting the highest authority within an agency. Apparently, the reference to ALJs means ALAs because (1) it is unclear whether any ALJs will be transferred under the bill and (2) the bill allows the chief ALA to hire ALAs, not ALJs.

### ***Nonparties***

The bill eliminates the authority of a presiding officer in a contested case or a hearing in a proceeding for a declaratory ruling to allow people not named as parties (intervenors) to present oral or written statements.

### ***Contested Cases***

The bill makes numerous changes to the UAPA’s provisions on contested cases. Specifically, the bill:

1. extends to agencies reviewing proposed final decisions the authority agencies hearing contested cases have to (a) take notice of generally recognized technical or scientific facts within their specialized knowledge and (b) use their experience, technical competence, and specialized knowledge when evaluating evidence;
2. creates an exception for hearings conducted by OAH to provisions of the UAPA regarding decisions made by less than all members of multi-member agencies (e.g., authorizing parties to request a majority of the members to review preliminary, procedural, or evidentiary rulings before a final decision or proposed final decisions);

3. allows agencies or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court;
4. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence or the filing of briefs, whichever is later, to apply to the New Britain, rather than Hartford, Superior Court for an order requiring the authority presiding over the case to render a proposed final decision right away;
5. allows a final decision to be stated orally on the record as opposed to written only in cases where there is no proposed final decision, and requires the record of oral decisions to include the names and addresses of all parties;
6. requires all proposed final and final decisions, instead of just final decisions adverse to a party, to apply pertinent laws and include the findings of fact and conclusions of law;
7. requires that the date a proposed final or final decision is delivered or mailed be endorsed on the front of the decision or on a transmittal sheet included with it; and
8. allows agencies to waive transcript costs if provided by law.

### **APPEALING A FINAL DECISION**

By law, a party in a contested case may file a petition with the deciding agency for reconsideration or modification of a final decision, or file an appeal to Superior Court after exhausting all administrative remedies. In cases of agency inaction, the bill specifies that the agency that issued the final decision is the agency in which the petition must be filed and where all administrative processes must be exhausted. In the case of proposed final decisions issued by OAH, this means the agency for which OAH issued the proposed decision.

The UAPA contains several dates from which a party has 45 days to appeal a final decision to Superior Court. The bill specifies that

appeals must be taken within the applicable 45-day period regardless of a final decision's effective date.

The bill also adds another date to the list of dates to address decisions issued by OAH. When OAH issues a proposed final decision that becomes a final decision due to agency inaction, the bill gives parties 45 days after the decision becomes final to file an appeal.

Lastly, under current law all appeals must be conducted by the court without a jury and the court cannot substitute its judgment for that of the authority that rendered the final decision. The bill allows (1) for jury trials in appeals from final decisions if provided by law and (2) substitutions if the law provides a different standard of review.

### **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12      Nay 0      (02/29/2008)